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In the Supreme Court of the United States

OCTOBER TERM 1962

No. 330

CITIZENS UTILITIES COMPANY OF CALIFORNIA, a corporation,
Appellant,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SACRAMENTO, AND CITY OF NORTH SACRAMENTO, a municipal corporation, (Real Party in Interest),
Appellees.

Appeal From the Judgment of the District Court of Appeal, State of California, in and for the Third Appellate District.

Statement as to Jurisdiction

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Appellees.

Appeal From the Judgment of the District Court of Appeal, State of California, in and for the Third Appellate District.

Statement as to Jurisdiction

Pursuant to United States Supreme Court Rules 13(2) and 15, Appellant files its statement of the basis upon which it is contended that the Supreme Court of the United States has jurisdiction on a direct appeal to review the judgment of the District Court of Appeal, State of California, in and for the Third Appellate District in question and should exercise such jurisdiction in this case.

OPINION BELOW

The District Court of Appeal delivered no written opinion or discussion of the case other than to decree that Appellant's Petition for Review and or Prohibition be denied. A true and exact copy of said decree marked Appendix "A" is attached hereto.

JURISDICTION

This appeal is from a final judgment made and entered by the District Court of Appeal, State of California, in and for the Third Appellate District, upon Appellant's Petition for a Writ of Review and/or Prohibition directing the Superior Court of the State of California in and for the County of Sacramento to prohibit Appellee, City of North Sacramento, from taking possession of Appellant's property in an eminent domain proceeding until payment of full just compensation was made to Appellant or reasonable security therefor was provided Appellant by said City in order that Appellant's rights under Section 1 of the 14th Amendment to the United States Constitution might be duly protected.

The final judgment appealed from was made and entered on April 18, 1962. Notice of Appeal from said judgment was filed in the District Court of Appeal for the State of California in and for the Third Appellate District on the 18th day of May, 1962.

The Supreme Court of the United States has jurisdiction to review by direct appeal the judgment and decree complained of by the provisions of 28 U.S.C. Sections 1257(2) and 2101(e).

The following decisions are believed to sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case:

Ward v. Kransky (1922), 42 S.Ct. 529; 259 U.S. 503; 66 L.Ed. 1033;

Fiske v. State of Kansas (1927), 47 S.Ct. 655; 274 U.S. 380; 71 L.Ed 1108;

Standard Oil Company of California v. Johnson (1941), 62 S.Ct. 1168; 316 U.S. 481; 86 L.Ed. 1611.

The statute of the State of California that is involved in this case is Section 1419 of the California Public Utilities Code which provides as follows:

> "The commission shall thereupon transmit to the court its finding, certified under the seal of the commission, fixing the extent to which the just compensation theretofore fixed by the commission shall be increased or decreased. The court shall thereupon modify its judgment so as to conform with the finding of the commission. The judgment of the court, as thus modified, insofar as it refers to the just compensation to be paid for the lands, property, and rights, shall be final and shall not be subject to modification, alteration, reversal, or review by any court. The filing of either or both the petitions specified in Section 1417 shall not act as a stay of the judgment in condemnation, but upon the payment of the just compensation fixed in the original judgment of condemnation the plaintiff in the action shall be entitled to immediate possession of the lands, property, and rights."

Although Appellant attacked said section in said District Court of Appeal as depriving Appellant of due process under Section 1 of the 14th Amendment to the United States Constitution under the facts of the instant case, said Court determined that said section was valid and refused to decree the relief necessary to protect Appellant from infringement of its rights under the said Constitution.

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QUESTIONS PRESENTED

Division 1, Part 1, Chapter 8 of the California Public Utilities Code establishes procedure whereby defined "political subdivisions" of the State desiring to acquire the lands, property and rights of any character whatsoever of any public utility under eminent domain may petition the California Public Utilities Commission to fix the just compensation which shall be paid by such political subdivision therefor. When the proceeding is submitted, the Commission is required to make and file a written finding fixing such just compensation as of the day on which the petition was filed with it. Within twenty days thereafter the property owner may stipulate to accept the sum fixed by the Commission; in the event the owner does not, the political subdivision may commence an action in a court of competent jurisdiction to condemn the property. If the court determines that the political subdivision has the right to take the properties sought, it must enter a judgment in favor of the complainant in the action, fixing as the just compensation which shall be paid for the taking of such properties the just compensation fixed by the Commission. The judgment of the court must include a provision in substance, that it is subject to modification by reason of such increase or decrease in the just compensation to be paid as may thereafter be certified to the court by the Commission.

The procedure specified permits the property owner to file a petition with the Commission subsequent to the entry of judgment in the Court action praying that the just compensation theretofore fixed by the Commission be increased by reason of expenditures made by the owner subsequent to the date of the filing of the original petition, for the purpose of preserving or improving the properties sought or by reason of other acts and occurrences subsequent to that

date. The political subdivision may petition the Commission to make a finding decreasing the just compensation by reason of depreciation or deterioration or other acts and occurrences subsequent to the date of the filing of the original petition. The finding of the Commission fixing the extent to which the 'just compensation' theretofore fixed should be modified is transmitted to the Court which must modify its judgment so as to conform to the ultimate Commission finding.

Section 1419 of the Code as stated before provides that the filing of either or both of such petitions after the entry of the judgment in condemnation shall not stay the same but "upon the payment of the just compensation fixed in the original judgment of condemnation the plaintiff in the action shall be entitled to *immediate possession of the lands, property and rights*". (Emphasis added). As such, the section patently dispenses with a requirement that in advance of the taking of such property the political subdivision, as condemnor, need deposit a sum sufficient to secure and insure that the utility owner will receive prompt payment of the full amount of just compensation when the same is finally assessed.*

Under the facts of the instant case, the principal questions are these:

1. Did the District Court of Appeal err in holding that the City of North Sacramento, a municipal corporation, as condemnor, may take possession of Appellant's public utility water system at this time upon payment of an amount determined by the California Public Utilities Commission to constitute just compensation therefor as of December 3,

* The provisions of Division 1, Part 1, Chapter 8 of the California Public Utilities Code from which the foregoing introductory statement is drawn are set forth in Appendix B hereafter under the heading "Statutes Involved".

1956 without providing any security for the payment of additional compensation to be assessed by said Commission for said property in proceedings pending before it by reason of improvements made by Appellant to said water system and other acts and occurrences since December 3, 1956, which additional compensation ranges from an admitted minimum of approximately $200,000 to a maximum of approximately $600,000?

2. Whether Section 1419 of the California Public Utilities Code deprives Appellant public utility owner of its property without due process of law in violation of Section 1 of the 14th Amendment to the United States Constitution in providing that a condemnor of public utility property shall be entitled to immediate possession of the same solely upon payment of the amount of just compensation assessed by the California Public Utilities Commission as of the date of commencement of valuation proceedings before it, regardless of the number of years between the date of the commencement of the action and actual possession (5½ years here) and the consequences on fair value of intervening events.

STATEMENT OF THE CASE

On December 3, 1956, the City of North Sacramento (hereinafter designated "City") commenced the initial step in bifurcated eminent domain proceedings before the Superior Court of the State of California and the California Public Utilities Commission by filing a petition with that Commission (Application No. 38629) in accordance with procedure prescribed in Division 1, Part 1, Chapter 8 of the Public Utilities Code (Sections 1401-1421). In its petition the City prayed that the Commission fix the just compensation which should be paid by it for described lands, property and rights comprising the public utility water

system owned and operated by Appellant in Sacramento County, California within and adjacent to said City's boundaries and known as Appellant's "North Sacramento District" water system.

On *September 15, 1958*, that Commission filed written findings in its *Decision No. 57344* fixing the just compensation to be paid by said City for said water system, *as of December 3, 1956*, at $2,200,000, together with severance damages of $6000, a total award of $2,206,000.

On *November 6, 1958*, the City filed Complaint in Eminent Domain in the Superior Court in and for the County of Sacramento (being proceeding number 116092 in the records of said Court), praying for a judgment condemning Appellant's water system and that the Court fix as the just compensation to be paid therefor the amount fixed by the Public Utilities Commission in its Proceeding No. 38629.

On *November 5, 1959*, following trial, Interlocutory Judgment of Condemnation was entered in such action wherein the Court decreed the condemnation of Appellant's water system upon the payment by the City of $2,206,000 as aforesaid, subject to modification by reason of such increase or decrease in compensation as might thereafter be certified to the Court by the Public Utilities Commission as provided in Sections 1416 to 1419 inclusive of the Public Utilities Code. (See Appendix "C")

On *November 25, 1959*, pursuant to Section 1417 of the Public Utilities Code, Appellant petitioned the Public Utilities Commission to make a supplemental finding *increasing* the just compensation theretofore fixed by its Decision No. 57344, as the result of expenditures made by Appellant subsequent to December 3, 1956 for the purpose of preserving and improving said water system and by reason of "other acts and occurrences", including increases in reproduction value since the December 3, 1956 valuation date.

On *December 2, 1959*, the City filed a corresponding petition with the Commission, praying that the just compensation fixed by it in its Decision No. 57344 be *decreased* by reason of loss or destruction of the properties sought or by reason of "other acts and occurrences" subsequent to December 3, 1956.

Appellant and the City stipulated that the Commission's supplementary finding be made as of such time as the City might take possession of said water system.

On *December 16, 1959*, pursuant to said stipulation the Commission continued the supplementary proceedings indefinitely to await the time when said City might take over such possession.

Appellant timely appealed from said Interlocutory Judgment of Condemnation to the District Court of Appeal in and for the Third Appellate District. Said Court affirmed said Interlocutory Judgment of Condemnation, on May 24, 1961. On *July 19, 1961*, the California Supreme Court denied Appellant's Petition for Hearing of said Decision, by divided vote.

On *August 4, 1961*, upon application by said City the Superior Court in and for the County of Sacramento extended the time for payment of said Interlocutory Judgment of Condemnation for one year from the date of the finality of said Interlocutory Judgment in accordance with its authority under Section 1251 of the California Code of Civil Procedure. Said application was based upon the Affidavit of Homer Jack, City Manager of North Sacramento, which affidavit declared in part that on August 6, 1956 the voters of said City had authorized it to incur a bonded indebtedness in the sum of $2,500,000 for the acquisition of a municipal water system, and that such bonds had to be issued and sold by the City in order to finance acquisition

of Appellant's water system, for otherwise the City *had not sufficient monies to pay the sum assessed in the Interlocutory Judgment.*

The City thereafter took no formal action toward acquiring Appellant's said water system until *March 29, 1962,* when the City Council of North Sacramento adopted City Resolutions Nos. 2650 and 2651 providing a) for the issuance of $2,500,000 in water revenue bonds pursuant to the authority obtained in 1956, b) authorizing and directing sale of said bonds and c) setting *April 11, 1962* as the date for receiving bids from persons interested in purchasing the same at par plus a minimum premium of $165,000 to be used in addition for the purpose of acquiring Appellant's water system.

On *March 30, 1962,* following receipt of advice of the action taken by the City in adopting such resolutions, and bearing in mind statements made by the City's special counsel after the Interlocutory Judgment became final but prior to said formal action by said City Council (which were later confirmed by statements in the introduction to the "Official Statement of the City of North Sacramento" issued by the City to interest bond bidders in said prospective sale), to the effect that the City felt that it had the right to take over Appellant's water sysem by paying Appellant the sum of $2,206,000 only and without regard to the supplementary valuation proceedings pending before the Public Utilities Commission, Appellant filed its Notice of Motion in said Superior Court. In said motion Appellant asked the Court to exercise its authority under California Code of Civil Procedure, Section 681(a)* to "Stay Execution of Judgment of Condemnation until Payment of Just Compensation is Made or Reasonable Security Therefor is

* Section 681(a): "The court, or the judge thereof, may stay the execution of *any judgment or order; . . .*" (Emphasis added.)

provided by Plaintiff Condemnor" in order that Appellant's rights under Sections 13 and 14 of Article I of the California Constitution and Section 1 of the 14th Amendment to the Federal Constitution might be protected. In support of this motion Appellant presented the Declaration of its Vice President and General Manager of water operations attesting to the fact that during the period subsequent to December 3, 1956 through January 1, 1962 Appellant had made net additions and betterments to its North Sacramento District system for the purpose of preserving or improving the properties comprising the same of the fair value of not less than $539,471 and that by reason of other acts and occurrences during said period,* the water system evaluated by the Public Utilities Commission as of December 3, 1956 had appreciated in value by not less than $83,633 after due allowance for retirements and for maximum depreciation thereof during said period and that as of January 1, 1962, the just compensation reasonably due Appellant for its said water system was not less than the sum of $2,829,104.00.

At no time during the course of its opposition to Appellant's motion did the City introduce evidence purporting to conflict with the sworn declaration of Appellant's Vice President regarding the increases in value in Appellant's water system aforementioned. In his original legal memorandum and at oral argument special counsel for the City represented only that the City had "estimated" the supplemental award of the Public Utilities Commission at "about $185,000". The City's entire factual presentation consisted of data set forth in its "Official Statement" to bond bidders referred to before and in a letter from the Public Utilities

* A substantial increase in the cost of labor, materials and equipment.

Commission dated August 25, 1961 relative to the total net increase in Appellant's utility plant to June 30, 1961 which declared that during the period December 4, 1956 to June 30, 1961 the total net increase in Appellant's utility plant computed at cost to Appellant was approximately $448,000. The City's presentation further revealed that $224,000 of the anticipated proceeds from its bond sale was necessarily earmarked for purchase of supplies and equipment, the payment of engineering, legal financing and "miscellaneous" costs and for initial deposit to a Bond Reserve and could not be used to compensate Appellant for its property.

The City did not at any time agree to pay or deposit *any* sums in excess of $2,206,000 as a condition to acquiring physical possession of said system.

Upon completion of oral argument and without further consideration the Court denied Appellant's motion for full payment or deposit of security therefor.

On *April 9, 1962*, Appellant filed its "Petition for Writ of Review and/or Prohibition" with the California District Court of Appeal in and for the Third Appellate District, setting forth the facts and contentions herein enumerated and praying that that Court issue its Writ of Review to said Superior Court that a review of the latter court's denial of Appellant's motion could be had and that such Court issue its order requiring said Superior Court and the City of North Sacramento to desist from proceedings directed to result in the acquisition of Appellant's water system pending determination of the validity of said order of denial. On *April 18, 1962*, the Third Appellate District Court denied Appellant's petition without opinion.

On *April 28, 1962* Appellant filed a Petition for a Hearing by the California Supreme Court of the decision of said District Court of Appeal, contending therein, as here, that

said City cannot constitutionally take over possession of Appellant's water system under the circumstances without first providing Appellant with reasonable security to insure prompt payment of the full measure of just compensation due it, (i.e. the original award of just compensation together with the increase therein which the Court reasonably anticipates under the evidence will be fixed by the California Public Utilities Commission in the aforementioned supplementary proceedings) and that under the evidence any sum so fixed cannot reasonably be less than the sum of $600,000. Appellant moreover contended that acquisition of its said water system by the City in conformance with the procedure set forth in Section 1419 of the California Public Utilities Code (i.e. without depositing reasonable security for payment of such sum in advance of such taking) deprived Appellant of due process guaranteed to it by Section 1 of the 14th Amendment to the United States Constitution. On *May 16, 1962* that Court denied Appellant's Petition for Hearing, without opinion. Appellant promptly filed its Notice of Appeal herein on *May 18, 1962*.

On *May 17, 1962* the City sold its aforementioned bonds and deposited the sum of $2,206,000 with the Clerk of the aforesaid Superior Court for the account of Appellant, and thereupon obtained an ex parte Final Order of Condemnation from that Court transferring title to said water system to the City and authorizing it to take over possession. Thereafter on said date the City made demand upon Appellant to surrender possession of its water system.

On *May 18, 1962* Appellant applied to the aforementioned District Court of Appeal to stay said Final Order of Condemnation and all further proceedings in the matter until Appellant could prepare and properly present to this Hon-

orable Court its application for a Supersedeas under Rule 18 of its Revised Rules so that Appellant would not be required to relinquish its property without first having its constitutional rights in the premises fully determined. The District Court of Appeal denied said request that same day without opinion.

Appellant attempted to have the Superior Court in and for the County of Sacramento stay its Final Order of Condemnation for a matter of days until Appellant could make application to this Court for a Supersedeas, as aforesaid, but that request was denied on *May 25, 1962*. On said date said Superior Court granted the City's request for a Writ of Assistance or Possession whereunder said City might be placed into possession of Appellant's water system through the auspices of said Court. On said date and *prior* to the formal rendition of the order granting said Writ, armed police officers of the City and others acting on its behalf took over and occupied physical possession of said water system and ousted Appellant therefrom.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

The California Courts have authorized the City, acting as a condemnor of public utility property, to take over physical possession thereof in advance of fully compensating Appellant therefor *without even so much as depositing a single penny to insure that Appellant will receive prompt payment of the balance of full just compensation when the same is ultimately assessed.* The California Courts have countenanced such action because of the language of Section 1419 of the Public Utilities Code which purports to entitle the condemnor to immediate possession of property by paying only an amount *which the statute acknowledges does not constitute full just compensation.*

Under the circumstances of the case at bar, entry of the City under said statute results in Appellant being deprived of security for payment of just compensation amounting to a substantial sum.

While the authorities hold that due process under the Federal Constitution does not require that an owner of property being condemned receive compensation in advance of relinquishing physical possession thereof to the condemnor, the cases are legion and uniform to the effect that the property owner is entitled *to a reasonable, certain and adequate assurance if he surrenders possession in advance, that payment of just compensation will not be unreasonably delayed after the amount of the same has been assessed.* (*Dohany v. Rogers* (1930) 50 S.Ct. 299; 281 U.S. 362; 74 L.Ed. 904; *Hays v. Seattle* (1920), 40 S.Ct. 125; 251 U.S. 233; 64 L.Ed. 243; *Crozier v. Fried. Krupp Aktiengesellschaft* (1911), 32 S.Ct. 488; 224 U.S. 290; 56 L.Ed. 771; *Sweet v. Rechel* (1895), 16 S.Ct. 43; 159 U.S. 380; 40 L.Ed. 138; *Cherokee Nation v. Southern Kansas R. Co.* (1889), 10 S.Ct. 965; 135 U.S. 641; 34 L.Ed. 295.)

The evidence before the lower court indicates that the City *must* look to the proceeds from its bond sale as the *only* source from which to pay the amount of just compensation determined to be due Appellant. Such evidence demonstrates that the City does not otherwise have the financial wherewithal to pay *any significant portion of said amount.* It also shows that *in any event* the proceeds from said bond sale are not sufficient, even if deposited in their entirety for Appellant's benefit, to secure prompt payment of the ultimate award of just compensation which shall be found due. Under such circumstances Appellant will be relegated to the remedies and the uncertainties and expenses attendant to becoming a municipal creditor.

California property held by a city in trust for a public use is exempt from seizure and sale upon execution (*Wood v. San Francisco* (1894), 4 Cal. 190, 194; *Oakland v. Oakland Waterfront Co.* (1897), 118 Cal. 160, 195-6), as is property held by a city for the purpose of exercising proprietory functions authorized by the California Constitution (*C. J. Kubach Co. v. City of Long Beach* (1935), 8 Cal. App. 2d 567, 577-8). Moreover, Section 690.16 of the Code of Civil Procedure specifically exempts from execution or attachment "the lots and grounds thereunder belonging and appertaining, owned or held by * * * an incorporated city * * *". Apart from these exemptions, the City has failed to evidence that it holds any other property which would be readily available to satisfy Appellant's claim for payment of full just compensation.

Article VII of Chapter 1, Division 1 of Title 5 of the California Government Code* provides the method whereby a

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* "*Sec. 50170. Filing.*

The county clerk shall file a list of all existing final judgments against a local agency of record in his office with the auditor and legislative body at least fifteen days before a tax levy is made." ("Local agency" includes a "city". Sec. 50001.)

"*Sec. 50171. Audit; certification; tax levy.*

The auditor shall audit the judgments and certify the amount of the judgments to the treasurer within five days after the list is filed with him. The legislative body shall include in the tax levy for the next fiscal year a rate sufficient to pay the judgments.

"*Sec. 50172. Tax levy; effect of failure to include judgment.*

Failure to include the amount of any existing final judgment in the tax levy for the year does not invalidate the tax levy, but the amount shall be included in the next tax levy.

"*Sec. 50173. Percentage payments; tax levy.*

In lieu of levying a tax rate for the payment of all the judgments in the next fiscal year, the legislative body may provide for their payment by including in the tax levy for the next fiscal year at least 10 percent of the total amount of the judgments. The same percentage shall be levied each successive year until the whole is paid.

"*Sec. 50174. Payment or percentage payments.*

The treasurer of the local agency shall pay the judgments. If the

city may pay judgments. As quoted below, those provisions enable such city to provide for their payment at the city's option *over ten-year period*; and actions cannot be brought or prosecuted on judgments against such city so long as they are being paid in accordance with the provisions thereof.

The foregoing demonstrates that only a deposit of reasonable security by the City *in advance* of taking over physical possession of Appellant's water system will protect Appellant's constitutional rights in the premises. Whether Section 1419 of the Public Utilities Code, in dispensing with the requirement of such security under these circumstances, is constitutional, presents a substantial Federal question.

Resolution of that Federal question will determine whether the City legally obtained and retains possession of Appellant's water system.

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legislative body has provided for payment by percentages in successive years, he shall pay to each judgment creditor the percentage of the judgment fixed by the legislative body.

"*Sec. 50175. Percentage payments; right of action on judgment.*

When provision for the payment of any final judgment is made by percentages in successive years, an action upon such judgment may be commenced within five years after the first tax levy which fails to include the percentage of the amount of the judgment fixed by the legislative body. An action shall not be brought or prosecuted on the judgment so long as it is being paid in such annual percentages."

CONCLUSION

It is respectfully submitted that this Court has jurisdiction of this appeal under Section 1257(2), Title 28, United States Code.

Dated: August 3, 1962

Respectfully submitted,

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(Appendices follow)

Appendix A

In the District Court of Appeal of the State of California
in and for the Third Appellate District

3 Civil 10508

CITIZENS UTILITIES COMPANY
OF CALIFORNIA

vs.

THE SUPERIOR COURT
(Sacramento County)

By the Court:

The petition for writ of review and or prohibition
denied.

Dated: April 18, 1962

Pierce,
Presiding Justice

Copy to:
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and Salinger
San Francisco 4

Mr. Raymond McClure
North Sacramento

Mr. Martin McDonough
Sacramento

Appendix B

STATUTES INVOLVED

Each of the statutes hereafter quoted are sections of the California Public Utilities Code:

Section 1402. "As used in this chapter, 'political subdivision' means county, city and county, city, municipal water district, county water district, irrigation district, public utility district, or any other public corporation."

Section 1403. "Any political subdivision may, at any time, file with the commission either a petition of the first class, setting forth the intention of the political subdivision to acquire under eminent domain proceedings or otherwise, the lands, property, and rights of any character whatsoever of any public utility or a petition of the second class, setting forth the intention of the political subdivision to initiate such proceedings as may be required under the law governing the political subdivision for the purpose of submitting to the voters of the political subdivision a proposition to acquire under eminent domain proceedings, or otherwise, the land, property, and rights of any character whatsoever of any public utility."

Section 1404. "Each such petition shall contain the name of the political subdivision appearing as petitioner therein, a description of the land, property, and rights which the political subdivision intends to acquire and the names and addresses of all owners and claimants thereof, including each trustee and mortgagee under each deed of trust and mortgage, if known, or a statement that they are unknown. The petition shall pray that the commission fix the just compensation which shall be paid by the political subdivision, under the law, for such lands, property, and rights.

The petition shall be signed in the name of the political subdivision and verified by the chairman or other presiding officer or by the secretary or clerk of the legislative or other governing body of the political subdivision. At the time the petition is filed, the petitioner shall also file with the commission additional copies thereof equivalent in number to three more than the number of owners and claimants named in the petition."

Section 1411. "When the proceeding has been submitted, the commission shall make and file its written finding fixing, in a single sum, the just compensation to be paid by the political subdivision for the lands, property, and rights. If the commission finds that severance damages should be paid, the just compensation for such damages shall be found and stated separately. The just compensation shall be fixed by the commission as of the day on which the petition was filed with the commission."

Section 1412. "Within 20 days after the commission has made and filed its finding, the owner of the lands, property, and rights may file with the legislative or other governing body of the political subdivision a written stipulation consenting and agreeing to accept the just compensation fixed by the commission. Upon the filing of the stipulation, the political subdivision shall proceed with all due diligence to provide the necessary funds under the law governing the providing of such funds for paying the just compensation fixed by the commission. Whenever the just compensation has been tendered by the political subdivision, a deed of grant, bargain, and sale conveying the owner's right, title, and interest in and to the lands, property, and rights to the political subdivision shall be executed and delivered by the owner, and the other claimants who have any right, title, or interest in the property shall execute appropriate instru-

ments conveying or releasing to the political subdivision their respective rights, titles, and interests therein. If the deed or the instruments of conveyance or release are not executed and delivered within 60 days after such tender has been made, the political subdivision may commence an action in a court of competent jurisdiction or proceed under Section 1413."

Section 1413. "In the case of a petition of the first class, if the owner does not file the stipulation within such 20 days, the political subdivision, within 60 days after the commission has made and filed its finding, shall commence an action in a court of competent jurisdiction to take such lands, property, and rights, under eminent domain proceedings. In the case of a petition of the second class, if the owner does not file the stipulation within such 20 days, the political subdivision, within 60 days after the commission has made and filed its finding, shall initiate proceedings for the purpose of submitting to its voters a proposition to acquire under eminent domain proceedings the lands, property, and rights. The political subdivision shall not be required, in either case, to delay for more than 20 days after the commission has made and filed its finding, before commencing such further proceedings. In the case of a petition of the second class, if the voters of the political subdivision, as provided by the law governing the political subdivision, vote in favor of any proposition to acquire under eminent domain proceedings, or otherwise, such lands, property, and rights, the political subdivision shall, within 60 days thereafter, commence an action in a court of competent jurisdiction to take such lands, property, and rights, under eminent domain proceedings, unless the owner has filed with the political subdivision a written stipulation consenting and agreeing to accept the just compensation fixed by the commission."

Section 1416. "The finding of the commission fixing the just compensation to be paid by the political subdivision for the lands, property, and rights shall be final and shall not be subject to modification, alteration, reversal, or review by any court of this State. If the court in which the political subdivision has commenced its action, subsequent to the making and filing by the commission of its finding as to just compensation, decides that the political subdivision has the right and power under the law to take the lands, property, and rights, it shall enter a judgment in favor of the complainant in the action, fixing as the just compensation which shall be paid for the taking of the lands, property, and rights, the just compensation fixed by the commission. The judgment may include the allowance of such costs between the parties as is provided for in the law of eminent domain of this State. The judgment of the court insofar as it refers to the just compensation to be paid for the lands, property, and rights, shall be final and shall not be subject to modification, alteration, reversal, or review by any court except as specified in this chapter. The judgment of the court shall include a provision, in substance, that it is subject to modification by reason of such increase or decrease in the just compensation to be paid as may thereafter be certified to the court by the commission, as provided in this chapter."

Section 1417. "At any time within 30 days subsequent to the entry of such judgment, the owner of the lands, property, and rights may file with the commission a verified petition in writing, alleging that by reason of expenditures made by the owner subsequent to the date of the filing of the original petition with the commission, for the purpose of preserving or improving the lands, property, and rights, or by reason of other acts and occurrences subsequent to that date, the just compensation theretofore fixed by the commission

should be increased, and praying that the commission make its finding increasing such compensation. At any time within 30 days subsequent to the entry of the judgment, the political subdivision may file with the commission a verified petition in writing, alleging that by reason of loss or destruction of the lands, property, and rights, or by reason of depreciation or deterioration thereof or by reason of other acts and occurrences, subsequent to the date of the filing of the original petition, the just compensation theretofore fixed by the commission should be decreased, and praying that the commission make its finding decreasing the compensation. The commission shall in each instance cause a copy of such petition or petitions to be served upon each party other than the petitioner, who was named as the political subdivision, owner, or claimant in the original proceeding before the commission, together with a written notice specifying the time and place of hearing on such petition or petitions, which time shall be within 45 days after the entry of the judgment by the court, and shall cause written notice of the time and place of the hearing to be served upon each petitioner in such petition or petitions. If both such petitions are filed, the commission may consolidate them for hearing and decision."

Section 1418. "After a hearing, the commission shall make and file its finding fixing, as of the date on which the finding is made and filed, the extent to which the just compensation theretofore fixed should be increased or decreased by reason of the matters alleged in the petition or petitions. If the claim is made that the just compensation theretofore fixed by the commission should be increased by reason of expenditures made by the owner subsequent to the date of the filing of the original petition with the commission for the purpose of preserving or improving the lands, property, and rights the commission may increase the just compensation

only to the extent to which the commission determines that such expenditures were beneficial to the lands, property, and rights, and reasonably and prudently made. The finding of the commission fixing the extent to which the just compensation theretofore fixed should be thus increased or decreased shall be final and shall not be subject to modification, alteration, reversal, or review by any court of this State."

Section 1419. "The commission shall thereupon transmit to the court its finding, certified under the seal of the commission, fixing the extent to which the just compensation theretofore fixed by the commission shall be increased or decreased. The court shall thereupon modify its judgment so as to conform with the finding of the commission. The judgment of the court, as thus modified, insofar as it refers to the just compensation to be paid for the lands, property, and rights, shall be final and shall not be subject to modification, alteration, reversal, or review by any court. The filing of either or both the petitions specified in Section 1417 shall not act as a stay of the judgment in condemnation, but upon the payment of the just compensation fixed in the original judgment of condemnation the plaintiff in the action shall be entitled to immediate possession of the lands, property, and rights."

Appendix C

In the Superior Court of the State of California in and for the County of Sacramento

No. 116092

City of North Sacramento, a municipal corporation,

Plaintiff,

vs.

Citizens Utilities Company of California, a corporation,

Defendant.

INTERLOCUTORY JUDGMENT OF CONDEMNATION

The above cause came on duly and regularly for trial on the fifth day of May, 1959, before the court without a jury, plaintiff appearing by its attorneys RAYMOND McCLURE and MARTIN McDONOUGH, and defendant appearing by its attorneys CLAUDE N. ROSENBERG and WILLIAM FLECKLES; and evidence both oral and documentary having been introduced and the cause submitted for decision, and written findings of fact and conclusions of law having been made,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

I.

That defendant Citizens Utilities Company of California is the owner of the lands, property, and rights sought in

this proceeding and described in the complaint herein, which lands, property, and rights are hereinafter particularly described.

II.

That plaintiff City of North Sacramento has the right and power under the law to take the said lands, property, and rights for the uses and purposes set forth in the complaint.

III.

That the use to which the lands, property, and rights sought in this proceeding are to be applied is a use authorized by law; and that the proposed public utility is a public necessity.

IV.

That the lands, property, and rights sought in this proceeding and described in the complaint herein comprise a municipal water system necessary for, and used and useful for the supply, transmission, and distribution of water for domestic and municipal purposes for the plaintiff and its inhabitants.

V.

That the taking of the said lands, property, and rights comprising said municipal water system is necessary for the proposed use, and the use to which said lands, property, and rights and said system are to be applied is a more necessary public use than the public use to which said lands, property, and rights are already appropriated.

VI.

That the just compensation to be paid for the said lands, property, and rights is the sum of $2,206,000, which sum is subject to modification by reason of such increase or

decrease as may hereafter be certified to this Court by the Public Utilities Commission of the State of California, as provided by sections 1416 to 1419, inclusive, of the Public Utilities Code.

VII.

That the filing of petitions to the said Public Utilities Commission for increase or decrease of the just compensation shall not act as a stay of this judgment in condemnation, but, as provided in section 1419 of the Public Utilities Code, upon the payment of the sum of $2,206,000 the plaintiff herein shall be entitled to immediate possession of the said lands, property, and rights.

VIII.

That plaintiff is entitled to, and is hereby awarded, the relief prayed for in its complaint, and the lands, property, and rights described in the complaint and hereinafter particularly described which comprise said municipal water system are hereby taken and condemned for public use for the uses and purposes set forth in the complaint, in accordance with the Conclusions of Law filed herein; and upon payment of the $2,206,000, subject to modification as provided in Paragraph VI above, to the defendant, or deposit of the moneys in Court for the defendant, the Court shall enter a final order of condemnation adjudging and decreeing that the said condemnation and taking shall be complete and final and that plaintiff shall fully have, own and possess the lands, properties and rights sought in this proceeding comprising the municipal water system referred to in Paragraph IV hereof for the uses and purposes set forth in the complaint herein.

IX.

That the following is a description of the lands, property, and rights described in the complaint comprising the defendant's said municipal water system and herein ordered to be taken and condemned:

(a) Those water production, storage and distribution facilities shown on Exhibit "B" hereto and located within an area within the County of Sacramento, State of California, bounded and described as follows:

Beginning at the intersection of the easterly line of the Western Pacific Railroad right of way with the northerly line of the Sacramento-Roseville freeway (U. S. Highway 40); thence northerly along said easterly line of the Western Pacific Railroad right of way to its intersection with a westerly projection of the northerly line of Bell Avenue; thence easterly along said projection of the northerly line of Bell Avenue, and along the northerly line of said Bell Avenue, to the latter's intersection with the northerly projection of the easterly line of 24th Street, sometimes known as Winters Street; thence southerly along said northerly projection of the easterly line of 24th Street, and along the easterly line of 24th Street, and along a southerly projection of said easterly line of 24th Street, to the intersection of said southerly projection of the easterly line of 24th Street with the westerly line of the Southern Pacific Railroad right of way; thence southerly along said westerly line of the Southern Pacific Railroad right of way to its intersection with a northerly projection of the easterly line of 18th Street, sometimes known as Plover Avenue; thence southerly along said northerly projection of the easterly line of 18th Street, and along the easterly line of 18th Street, and along a southerly projection of the easterly line of 18th Street, to a point 450 feet south of the south line of Silica Avenue; thence westerly and parallel to the said

south line of Silica Avenue and its westerly extension to the intersection thereof with the westerly line of the Sacramento-Roseville freeway (U. S. Highway 40); thence southerly and westerly along said westerly line of the Sacramento-Roseville freeway to the point of beginning.

together with all water pipe lines, water mains, tanks, treatment facilities, pumping stations, pumps, service connections, and meters and meter housings, and all other water storage, transmission and distribution facilities physically connected thereto: but not including (i) any fire hydrants, wherever located; or (ii) service connections, or any facilities physically connected thereto except meters, beyond the curb line or property line of premises served abutting upon a street, other thoroughfare, utility right of way or easement. The facilities described in this paragraph (a) are all physically connected to, and are all of the facilities physically connected to the wells located on those parcels of land described in paragraph (b) next:

(a-1) Those three water pipe lines, and service connections, meters and meter housings physically connected thereto, which are physically connected to water pipe lines described in subdivision (a) hereof, but which extend outside the area described in said subdivision (a) hereof, in the following locations, as shown in Map 1 of Exhibit "B" hereof:

(1) lying along Grand Avenue east of said area;

(2) lying along Roanoke Avenue east of said area;

(3) crossing the Sacramento-Roseville freeway (U. S. Highway 40) and extending along said freeway near the southwest corner of said area.

(b) Those parcels of land, and the improvements thereon and appurtenances thereto described in Exhibit "C" hereto attached and hereby made a part hereof;

(c) Any and all rights that may have accrued by virtue of the provisions of section 19 of Article XI of the Constitution of the State of California, as said section was written prior to the amendment to said section which was adopted on October 10, 1911, to maintain, or place and maintain, the said municipal water system or any part or portion thereof;

(d) Each and all rights existing by virtue of any or all franchises granted by the County of Sacramento to maintain, or place and maintain, the said municipal water system or any part or portion thereof;

(e) The rights of way and easements to maintain, or place and maintain, the said municipal water system or any part or portion thereof, whether existing by virtue of grant, prescription or otherwise.

The system, lands, property, and rights referred to in this paragraph as being that which plaintiff seeks to acquire are substantially the same system, lands, property, and rights referred to in paragraphs I, IV and V above. The lands, property, and rights referred to in this paragraph which are situated outside the exterior boundaries of plaintiff are essentially a part of defendant's municipal water system within the boundaries of plaintiff.

X.

That defendant is entitled to its costs as provided by law in the sum of ..... Dollars ($).

Given and rendered in open court this 5th day of Nov., 1959.

JOHN QUINCY BROWN
Judge of the Superior Court

Attest: C. C. LARUE, *Clerk*
By: G. L. SWETZER
Deputy Clerk

[Seal]